

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SAN JOSE PACIFICA REAL ESTATE, §
S DE R.L. DE C.V. and REAL ESTATE §
PACIFICA RT, S. DE. R.L. DE. C.V. §**

Plaintiffs,

VS.

**FIDELITY NATIONAL TITLE
INSURANCE COMPANY**

Defendant.

§ CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

Notice is hereby given that, pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446(b), Defendant Fidelity National Title Insurance Company (“FNTIC”) hereby removes this action from the 298th Judicial District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division, and shows as follows:

STATE COURT ACTION

1. On July 27, 2016, Plaintiffs San Jose Pacifica Real Estate, S. de R.L. de C.V. and Real Estate Pacifica RT, S. de R.L. de C.V. (collectively, “Plaintiffs”) filed their Original Petition against FNTIC in the 289th Judicial District of Dallas County, Texas in an action styled *San Jose Pacifica Real Estate, S. de R.L. de C.V. and Real Estate Pacifica RT, S. de R.L. de C.V. v. Fidelity National Title Insurance Company*, Cause No. DC-16-09067 (the “State Court Action”).

2. FNTIC was served with the Original Petition on August 5, 2016.

3. In the State Court Action, Plaintiffs filed suit under a Level 2 Discovery Control Plan seeking the following declarations from the Court: (1) they are insureds under a lender's policy of title insurance; and (2) they have continuing coverage under said policy. Specifically,

Plaintiffs alleged that they have coverage under a lender's title policy of insurance issued to Lehman Brothers Holdings, Inc. ("Lehman") in connection with its interest in certain indebtedness secured by approximately seven hundred and fifty (750) acres of property located in Cabo San Lucas, Baja Sur, Mexico (the "Debt") by virtue of an assignment from FCCD Limited. FCCD Limited obtained its interest in the Debt through an assignment by Lehman of a partial participation interest in the Debt in 2007 as well as an assignment from State Street Bank and Trust Co., which obtained its interest in the Debt via an assignment from Lehman in June 2009.

4. Plaintiffs also seek their attorneys' fees in connection with their declaratory action.

5. FNTIC generally denies all of Plaintiffs' allegations.

PROCEDURAL REQUIREMENTS

6. With this Notice of Removal, FNTIC seeks removal of the State Court Action to this Court on the basis that complete diversity exists between Plaintiffs and FNTIC, as discussed in more detail below. Also, the amount in controversy exceeds or will likely exceed \$75,000.00, excluding interest and costs.

7. Pursuant to 28 U.S.C. § 1441(a), Venue for this Removal is proper in the U.S. District Court for the Northern District of Texas, Dallas Division because this district and division includes Dallas County, Texas—the location of the pending State Court Action.

8. This Removal is timely. Plaintiffs served their Original Petition on FNTIC on August 5, 2016 and this motion is being filed on August 26, 2016, well within the thirty days required by 28 U.S.C. §1446(b).

9. Pursuant to 28 U.S.C. § 1446(c)(1), this Notice of Removal is accompanied by copies of the following:

a. An index of matters being filed is attached hereto as **Exhibit A**;

- b. The state court docket sheet, all executed process in the case, all pleadings asserting causes of action (e.g. petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings, all orders signed by the state judge) are attached hereto as Exhibits B.1-B.5; and
- c. A list of all counsel of record, including addresses, telephone numbers and parties represented is attached hereto as Exhibit C.

10. As the removing party, FNTIC consents to this removal. There are no other defendants.

11. Simultaneously with the filing of this Notice of Removal, FNTIC is filing copies of this Notice of Removal with the 289th Judicial District Court in Dallas County, Texas, pursuant to 28 U.S.C § 1446(d). FNTIC will promptly give all parties written notice of the filing of this Notice of Removal as required by 28 U.S.C § 1446(d).

BASIS FOR REMOVAL

12. Removal is proper because there is complete diversity between the parties. 28 U.S.C. §1332(a); *Johnson v. Columbia Props. Anchorage, L.P.*, 437 F.3d 894, 899-900 (9th Cir. 2006).

13. As admitted in the Original Petition, Plaintiffs are Mexican limited liability corporations.

14. FNTIC is a California corporation with its principal place of business located at 3760 State Street, Suite 201, Santa Barbara, California 93105.

15. Accordingly, complete diversity exists.

16. Additionally, the amount in controversy exceeds or is likely to exceed \$75,000, excluding interest and costs. 28 U.S.C. §1332(a); *Andrews v. E.I. du Pont de Nemours & Co.*, 447

F.3d 510, 514-15 (7th Cir. 2006). According to their Original Petition, Plaintiffs seek actual damages in the amount of \$100,000.00 or less and non-monetary relief.

17. For the reasons stated above, this Court has jurisdiction over this matter.

JURY DEMANDED

18. Plaintiffs demanded a jury in the State Court Action.

CONCLUSION

19. For the reasons stated above, Defendant Fidelity National Title Insurance Company asks the Court to remove this suit to the United States District Court for the Northern District of Texas, Dallas Division.

DATED: August 26, 2016

/s/ David E. Littman

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent to the following counsel in accordance with the Federal Rules of Civil Procedure on the 26th day of August, 2016.

VIA CM/ECF

Brian W. Zimmerman
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/s/ David E. Littman

David E. Littman